

MAR 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In re Matter of)	MM DOCKET NO. 93-295
)	
Amendment of Section 73.202(b))	RM-8362
Table of Allotments,)	
FM Broadcast Stations.)	
(San Clemente, California))	

REPLY COMMENTS OF MT. WILSON FM BROADCASTERS, INC.

Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), by its attorneys, files these Reply Comments in opposition to the Comments submitted herein by Steven R. Bartholomew. Bartholomew's claims that there are two transmitter sites available from which a San Clemente FM station could broadcast on Channel 285A with no deviation or only minor deviation from the requirements of the Commission's rules is without foundation. Neither of the sites described by Bartholomew is available for this purpose. Even if they were, they would present the same problems as those which led the Commission to refuse to authorize a San Clemente station on Channel 285A and to direct the staff to delete the Channel from the Table of Allocations. In support of its position, Mt. Wilson states:

1. The only claim of the availability of a useable transmitter site made by Bartholomew which the Commission has not in terms already considered and rejected concerns property under lease from Camp Pendleton to Southern California Edison.

Bartholomew asserts that Steven Conroy of Southern California Edison^{1/} "verbally indicated that they may be willing to lease tower space" for an FM broadcast antenna (Comments, p. 2). This assertion bears an uncanny resemblance to the statement originally made in the rule making proceeding which led to the unfortunate allotment of the channel, that Camp Pendleton authorities "might consider locating a transmitter within the boundaries of the Camp." On The Beach Broadcasting, 8 FCC Rcd. 3123, 3124 (1993). Just as that equivocal statement proved to have no practical basis whatsoever, so too does the alleged statement on which Bartholomew relies.

2. Mt. Wilson has provided to Mr. Conroy, to Jack Wallace, Supervisor, Nuclear Affairs, and to a member of the legal staff of Southern California Edison, copies of Bartholomew's Comments. Each of the three has assured Mt. Wilson that, despite the quasi-legal meanderings and the alleged statement of Conroy contained in the Comments, under no circumstances would Southern California Edison permit use of the leased property without the prior written approval of the authorities at Camp Pendleton. For the purposes of this proceeding, it is not necessary to examine the terms of the lease between Camp Pendleton and Southern California Edison to ascertain whether the lessee has the power to permit use of the property by Bartholomew. It is enough for the Commission to know that Camp Pendleton would clearly not permit such a use,

^{1/} Bartholomew has incorrectly referred to Conroy as Director of Corporate Communications.

and that Southern California Edison would not consider the request, based upon the Marine Corps' stated position against such a use.

3. Attached hereto as Attachment A, primarily for the edification of Bartholomew, an avowed latecomer to the proceeding, is a copy of a letter from the Chief of Staff at Camp Pendleton to the Commission, filed last August which sets forth in unequivocal terms the opposition of the authorities on the base to any such use of its leased property as is proposed by Bartholomew. That letter also negates unequivocally Bartholomew's assertion (Comments, pp. 7-8) that a site is available outside the boundaries of Camp Pendleton on property leased by the Atchison, Topeka & Santa Fe Railroad. A proposal to use this very site in On The Beach Broadcasting elicited the attached response from the authorities at Camp Pendleton.

4. On September 22, 1992, in On The Beach Broadcasting, the Mass Media Bureau also opposed any use of the ATSF site because an FM broadcast station on that site "would significantly impair the effectiveness of the Commission's Fixed Automatic Direction Finder system located in San Diego, California." That system is designed, in part, to assist the United States Coast Guard in locating transmissions at sea during search and rescue operations, and the interference would leave a large span of ocean without adequate coverage, with a very serious impact on the life and safety of persons aboard vessels off the coast of Southern California.

5. Even if either or both sites described by Bartholomew were available, the history of this proceeding would still compel the deletion of Channel 285A. Since this is an allotment proceeding, it is significant not only that the sites proposed by Bartholomew are short-spaced, but that in light of changes in the separations requirements since the original allotment of Channel 285A, there is no possible non-short-spaced site available for that channel except 30 miles out in the ocean. There is attached hereto, as Attachment B, an Engineering Statement of John J. Davis, Mt. Wilson's engineering consultant, which clearly establishes that fact.

6. The Commission has made clear in the NPRM that the allotment of Channel 285A to San Clemente should be considered as though it were a new allocation. Indeed, in paragraph 9 of the NPRM, the Commission imposed conditions which are much more rigorous with respect to the availability of a transmitter site than in the normal allotment rulemaking. Bartholomew has failed to demonstrate, as required, that he has taken positive measures to obtain assurances from the owner (Camp Pendleton) of its proposed sites that he will be able to buy or lease those locations. Even more significantly, he has failed utterly to provide the required evidence that the military policy of Camp Pendleton has changed.

7. Any proposal to use the Bartholomew proposed sites or any other site located on land would violate the separations requirements. On The Beach Broadcasting establishes that the

public interest could not be served by such a waiver; the proved interference effects are too great. Bartholomew attempts to establish that interference to Mt. Wilson would not occur because of terrain features, a showing which for this purpose is gravely inadequate. He does not even consider the vast interference to any San Clemente proposal which would result.

8. Bartholomew's expression of interest in retention of Channel 285A at San Clemente flies directly in the face of the lessons learned through On The Beach Broadcasting. Mt. Wilson has not here attempted to describe all of the efforts of applicants and potential applicants in that case to find a suitable transmitter site or to establish some overwhelming need for a second FM station at San Clemente. Bartholomew's essentially unsupported desires cannot overcome the vast factual data which prove his desires to be unattainable.

Respectfully submitted,

MT. WILSON FM BROADCASTERS, INC.

By Stanley S. Neustadt
Stanley S. Neustadt

By Robert B. Jacobi
Robert B. Jacobi

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1333 New Hampshire Avenue, N.W.
Suite 600
Washington, DC 20036
(202) 293-3860

Its Attorneys

Date: March 16, 1994



UNITED STATES MARINE CORPS
MARINE CORPS BASE
CAMP PENDLETON, CALIFORNIA 92055-5001

IN REPLY REFER TO

11011
BI1/SC
19 AUG 1992

Mrs. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, DC 20544-0001

Dear Ms. Searcy:

We have reviewed the Petition for Leave to Amend and Amendment (hereinafter, "Petition") as well as the Consolidated Reply and Comments (hereinafter, "Reply") submitted by On The Beach Broadcasting, in MM Docket No. 89-503. We have also reviewed the month-to-month lease wherein the Atchison, Topeka & Santa Fe Railway Company (hereinafter, "AT&SF") purports to convey an interest in property to Beach for purposes of erecting a broadcast tower.

The subject property is located within the boundaries of Camp Pendleton, California, and is represented by the shaded area in the drawing attached hereto as enclosure (1). This small parcel, along with over 100,000 additional acres, was condemned and taken by the United States by Order of Possession dated July 9, 1942, and ratified by court order dated January 5, 1943. A true and correct copy of the Decree on Declaration of Taking (hereinafter, Decree), and the legal description of property subject to the taking (which the Decree incorporates by reference as "Schedule B"), are attached hereto as enclosures (2) and (3), respectively. In short, the property in question belongs to the United States of America. The lease executed by Beach and AT&SF is therefore null and void.

Pursuant to the Decree the United States Government took fee simple ownership of all land comprising Camp Pendleton, subject to existing easements including railroad rights-of-way. As demonstrated in enclosure (1), the property in issue is north of and adjacent to the AT&SF right-of-way. Since the property is outside the right-of-way, the AT&SF has no interest in the property whatsoever; not by fee, and not by easement. Beach's application should be denied solely on this ground.

Additional reasons require denial. The proposed antenna tower is incompatible with the needs of the Marine Corps and poses a major threat to aircraft. Contrary to Beach's assertions, exercise "Tandem Thrust" was conducted on, over and through the area between July 12 - 20, 1992. This exercise involved over 20,000 Army, Navy, Air Force and Marine Corps personnel, 19 ships and submarines and 200 aircraft. These aircraft are required to fly over the proposed tower site at altitudes lower than the height of the tower. We cannot allow our personnel and air assets to be jeopardized by the proposed tower. Beach's application should, therefore, be denied.

11011
BI1/SC
19 AUG 1992

In the event that the Federal Communications Commission does grant Beach's application, Beach can expect vigorous opposition to the validity of AT&SF's lease of the subject property. AT&SF and/or its leasing agent are hereby put on notice that this and any future attempt to convey any interest in property belonging to the United States will not be tolerated.

If you have any questions regarding this matter, please contact Colonel Richard E. Ouellette at the address shown above or at (619) 725-6115.

Sincerely,



M. E. Lowe
Colonel, U.S. Marine Corps
Chief of Staff

Encl:

- (1) Map of subject property
- (2) Decree on Declaration of Taking
of 5 Jan 43
- (3) Legal description of property
(known as Schedule "B")

Copy to:

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ENGINEERING EXHIBIT

COMMENTS ON THE PROPOSED DELETION
OF CHANNEL 285A
ALLOTTED TO
SAN CLEMENTE, CALIFORNIA

PREPARED FOR:

MOUNT WILSON FM BROADCASTERS, INC.
1500 COTNER AVENUE
POST OFFICE BOX 250028
LOS ANGELES, CALIFORNIA 90025

MARCH 10, 1994

PREPARED BY:

JOHN J. DAVIS
CONSULTING ENGINEER
POST OFFICE BOX 128
SIERRA MADRE, CALIFORNIA 91025-0128
(818) 355-6909
FAX: (818) 355-4890

1.0 INTRODUCTION

This Engineering Exhibit was prepared for MOUNT WILSON FM BROADCASTERS, INC., licensee of FM station KKGQ, Channel 286B, licensed to Los Angeles, California, to support its comments related to the proposed deletion of Channel 285A which is allotted to San Clemente, California. It will be shown that there is no area where a Channel 285A transmitter could be located and comply with the mileage separation requirements of the Commission's Rules.

2.0 MILEAGE SEPARATION REQUIREMENTS

There are three existing Class B stations that determine the acceptable areas where a Channel 285A transmitter could be located and comply with the provisions of Section 73.207(b)(1) of the Rules:

<u>STATION</u>	<u>CITY OF LICENSE</u>	<u>CHANNEL</u>	<u>REQUIRED SEPARATION</u>
KKGQ	Los Angeles, CA	+1st Adj. 286B	113 km
KDES	Palm Springs, CA	-1st Adj. 284B	113 km
KCBQ	San Diego, CA	+2nd Adj. 287B	69 km

On Figure 1, which is a reduction of a portion of USGS topographic map, California South (scale 1:500,000), is plotted the required separation distance for each of the

above three stations. It can be seen that there is no area where a Channel 285A transmitter can be located without violating Section 73.207(b)(1). The only location which does comply with 73.207(b)(1) is in the Pacific Ocean 30 km from shore!

3.0 OLD CLASS A RULE CONSIDERATIONS

It might be argued that since Channel 285A was allotted to San Clemente when the maximum power for a Class A station was 3 kW rather than the current 6 kW that the mileage separation requirements for San Clemente should be based upon the old 3 kW Class A rules. Even here there is not a suitable location where a Channel 285A transmitter could be located to serve San Clemente. The old Class A mileage separation requirements are:

<u>STATION</u>	<u>CITY OF LICENSE</u>	<u>CHANNEL</u>	<u>REQUIRED SEPARATION</u>
KKGO	Los Angeles, CA	+1st Adj. 286B	105 km
KDES	Palm Springs, CA	-1st Adj. 284B	105 km
KCBQ	San Diego, CA	+2nd Adj. 287B	69 km

Also plotted on Figure 1 is the 105 km distance from KKGO and KDES. It can be seen that even under these conditions there is no location where a transmitter could be located and comply with the old Class A rules.

4.0 RESPONSE TO COMMENTS OF STEVEN R. BARTHOLOMEW

On January 31, 1994, Steven R. Bartholomew ("Bartholomew") filed comments in this matter. It is Bartholomew's contention that there are two sites, the Southern California Edison ("Edison") site and the ATFS site which would not violate the provisions of Section 73.207(b). Bartholomew is in error.

Based upon the requirements of 73.207(b)(1), the Bartholomew proposal is short-spaced as follows:

<u>STATION</u>	<u>EDISON SITE</u>	<u>ATFS SITE</u>
KKGO	-7.6 km	-10.0 km
KCBQ	-2.4 km	

Based upon the old 3 kW Class A mileage separation requirements, the Bartholomew proposal is short-spaced as follows:

<u>STATION</u>	<u>EDISON SITE</u>	<u>ATFS SITE</u>
KKGO		-2.0 km
KCBQ	-2.4 km	

The short-spacing is also shown in Figure 1 where the two sites proposed by Bartholomew are shown and it can be seen that neither site complies with either 73.207(b)(1) nor the old 3 kW Class A separation rules.

5.0 SUMMARY

In order to preserve the integrity of the Commission's Mileage Separation Requirements, as contained within Section 73.207(b), Channel 285A should be deleted from the Table of Allotments and assigned to an area where compliance with the Commission's rules is possible.

COMMENTS RELATED TO THE PROPOSED
DELETION OF CHANNEL 285A
SAN CLEMENTE, CALIFORNIA

PREPARED FOR:

MT. WILSON FM BROADCASTERS, INC.
LOS ANGELES, CALIFORNIA

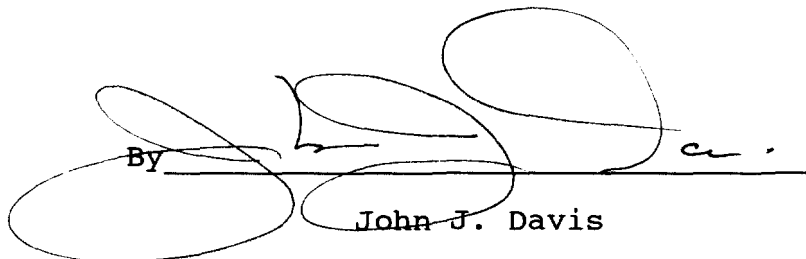
5.0

AFFIDAVIT

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

ss:

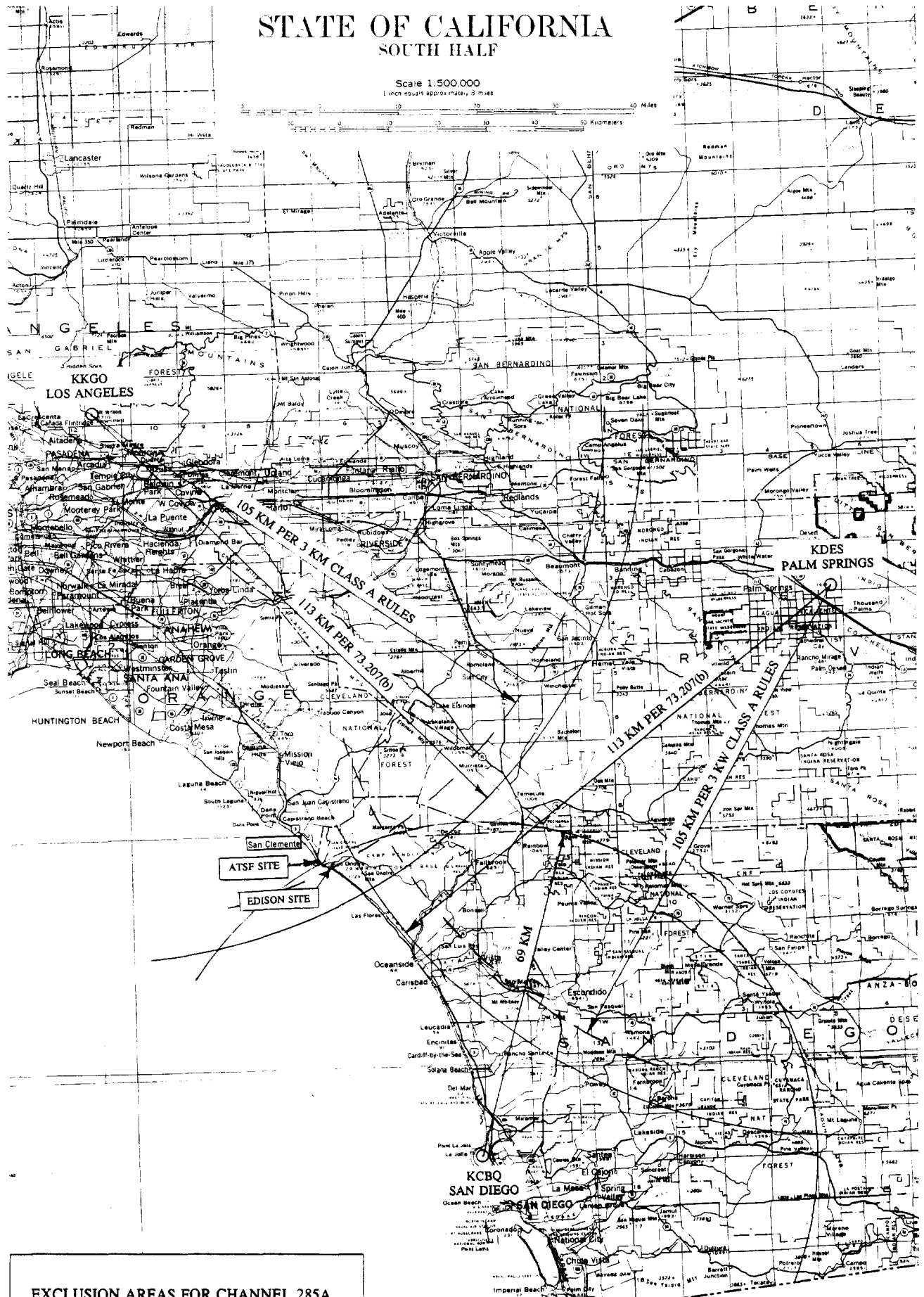
JOHN J. DAVIS, does hereby swear that he is a consulting electronics engineer with offices in Sierra Madre, California; that he is a Registered Professional Engineer in the State of California; that his qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission; that the foregoing engineering statement was prepared by him or under his direction; and that the statements contained therein are true of his own knowledge and belief, and as to those statements prepared under his direction, he verily believes them to be true and correct.

By  _____
John J. Davis

March 11, 1994

STATE OF CALIFORNIA SOUTH HALF

Scale 1:500,000
1 inch equals approximately 3 miles



EXCLUSION AREAS FOR CHANNEL 285A
SAN CLEMENTE, CALIFORNIA

M
FIGURE 1

CERTIFICATE OF SERVICE

I, Brenda T. Chapman, hereby certify that on this 16th day of March, 1994, a copy of the Reply Comments of Mt. Wilson FM Broadcasters, Inc. was mailed U.S. Mail, First Class, postage prepaid to the following:

Steven R. Bartholomew
194 Wyndham Place
Robbinsville, New Jersey 08691


Brenda T. Chapman